IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.1 of 2000 with RFAs No.2 & 3 of 2000.

Reserved on:08.10.2007.

Decided on: *October 10, 2007*

For title, please see over-leaf:

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: }
} Please, see over-leaf.
For the Defendants: }

Kuldip Singh, Judge

This judgment shall dispose of RFA No.1 of 2000, RFA No.2 of 2000 and RFA No.3 of 2000 arising out of award dated 30.9.1999 passed by learned District Judge, Solan in Land Reference No.4-S/4 of 1997, Land Reference No.1-S/4 of 1997 and Land Reference No.3-S/4 of 1997 respectively.

2. The brief facts of the case are that the State issued notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') which was published in the official gazette on 16.4.1994 for acquiring the following land of the land owners in

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[1] *Whether the reporters of the local papers may be allowed to see the Judgment? **Yes***

Mauza Bhanat for construction of 132 KV transmission line Solan to Kunihar for appellant No.2:-

Petition No.	***Area and Khasra No.***	***Kind of the land***
1-2/4 of 97	0-2 Bigha, 64/1	Kuhli Awal
4-S/4 of 97	0-4 Bigha, 189/96/1	Ghasni
3-S/4 of 97	0-1 Bigha, 61/1	Kuli Awal

The appellant No.1 – Land Acquisition Collector (for short 'Collector') announced the award on 10.7.1996. The compensation was assessed at the rate of Rs.60,000/- per Bigha for Kuhli land and Rs.40,000/- per Bigha for Ghasni. The land owners were not satisfied with the award, therefore, they filed reference petitions under Section 18 of the Act. Their case is that the acquired land was cultivable land and it used to produce cash crops of tomato, potato, cauliflower etc. They claimed interest from the date of possession. They prayed for enhancement of compensation along with other statutory payments and interest. The claim of the land owners was opposed by taking preliminary objections that the claim petitions were barred by limitation and the acquired land had no value, the land has been acquired only for erecting poles. The Collector has awarded just compensation to the land owners. The learned District Judge vide impugned award assessed the market value of the acquired land at Rs.1 lac per Bigha irrespective of the quality of the land. On this amount, statutory payment at the rate of

12%, solatium at the rate of 30% and interest at the rate of 9% from the date of possession for one year and thereafter at the rate of 15% per annum was allowed. The learned District Judge decided all the petitions by common award dated 30.9.1999 which have been assailed in this Court by way of present appeals.

3. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the appellants has submitted that learned District Judge has awarded excess compensation to the land owners by assessing market value of the acquired land on the higher side irrespective of the quality of the land. The interest has been wrongly awarded from the date of possession instead of date of notification under Section 4 of the Act. The learned counsel for the land owners has supported the impugned award.

4. PW-1 Nathi Ram, one of the vendors, has proved sale deed dated 23.12.1994 Ext.PW-1/A. He sold 171 square metres land at Saproon, Solan for a consideration of Rs.72,000/-. The land sold by sale deed Ext.PW-1/A was *Ghasni* and was at a distance of 1 ½ kilometer from the acquired land situated in village Bhanat. PW-2 Kirpa Ram is the vendee of sale deed Ext.PW-1/A. He has also stated that land covered by sale deed Ext.PW-1/A was *Ghasni.* PW-3 Anil Kumar is the vendee of sale deed dated 21.12.1996 Ext.PW-1/B of land measuring two Biswas situated at Mauza Kailar for a consideration of Rs.20,000/-. The sold land was *Toda* and is at

a distance of 1 Kilometre from village Bhanat. PW-4 Smt.Kamni Devi, Junior Assistant, Tehsil Office, has stated that she has brought the original of Ext.PW-1/A and Ext.PW-1/A is its true attested copy. She has also stated that she has brought the original of Ext.PW-1/B and Ext.PW-1/B is its true copy. PW-5 Smt.Amri Devi has stated that her two Biswas land was acquired in village Bhanat for construction of tower. She has stated that she has been awarded less compensation. She has also stated that four Biswas land of Sheela and one Biswa land of Mansi Devi was also acquired. These lands are irrigated by *Kuhal*. The rate of land is Rs.1 ½ lacs per Bigha in their village. She has also sold land, her husband agreed to sell the land to Narender Singh and thereafter she sold 6 Biswas of land to Narender Singh after the death of her husband in village Bhanat vide sale deed dated 17.4.1996 Ext.PW-5/A. This land was sold at less rate as many years back there was agreement to sell this land. PW-7 Narender Singh is the vendee of sale deed Ext.PW-5/A which he purchased for a consideration of Rs.30,000/- in the year 1996. The agreement to sell the land had taken place much earlier. PW-8 Sarwan Kumar is one of the vendees of sale deed dated 17.4.1995 Ext.PW-8/A and PW-9 Om Parkash is the vendor of sale deed Ext.PW-8/A of land measuring 221 square metre which he sold on 17.4.1995 for a consideration of Rs.1,02,000/-. The land was *Ghasni.*

5. RW-1 Chain Singh has placed on record copies of sale deeds Ext.RW-1/A dated 29.11.1994 of land situated at Mauza Top Ki Ber and Ext.RW-1/B dated 5.1.1994 of land situated at Mauza Top Ki Ber. RW-2 Prem Chand is the vendor of sale deeds Ext.RW-1/A and Ext.RW-1/B. He sold 2-11 Bighas land for a consideration of Rs.82,000/- vide sale deed Ext.RW-1/A and 5-4 Bighas land for a consideration of Rs.45,000/- vide sale deed Ext.RW-1/B. RW-3 Raghuvir Singh has placed on record copy of award dated 10.1.1996 Ext.RW-3/A, copy of notification dated 30.3.1994 under Section 4 of the Act Ext.RW-3/B, copy of notification dated 28.3.1995 under Section 6 of the Act Ext.RW-3/C and copy of notice dated 22.7.1995 under Section 9 of the Act Ext.RW-3/D.

6. The learned District Judge has relied sale deed Ext.PW-5/A dated 17.4.1996 which is of land situated in village Bhanat where the land was acquired. One of the land owners herself sold the land vide Ext.PW-5/A. The other sale deeds, relied by both the sides, are of other villages and, therefore, those have been rightly not relied by the learned District Judge for assessing the market value of the acquired land. The notification under Section 4 of the Act was issued on 30.3.1994. The sale deed Ext.PW-5/A was executed on 17.4.1996. It has come on record that agreement to sell the land covered by sale deed Ext.PW-5/A was entered into much earlier but due to death of owner of the land sale

deed was executed on 17.4.1996 after his death. The learned District Judge has taken the view that the agreement to sell the land covered by Ext.PW-5/A was entered into around the time of issuance of notification under Section 4 of the Act, therefore, sale deed Ext.PW-5/A has been relied for assessing the market value of the acquired land. There is no bar to rely sales executed after notification under Section 4 of the Act provided such sales are genuine, bonafide and are proximate in time to the notification under Section 4 of the Act and not executed to enhance the market value of acquired land. In the present case, the agreement to sell the land covered by sale deed Ext.PW-5/A has been traced around the issuance of notification under Section 4 of the Act, therefore, no fault can be found when learned District Judge has relied sale deed Ext.PW-5/A for assessing the market value of the acquired land. In ***State of U.P.*** *Versus* ***Major Jitendra Kumar and Others [AIR 1982 SC 876],*** the Apex Court has held that the sale subsequent to the notification under Section 4 of the Act can be relied for the purposes of assessing the market value if there is no evidence regarding fluctuation in market rate. The learned District Judge has rightly appreciated the material on record and assessed the market value of the acquired land at the rate of Rs.1 lac per Bigha.

7. The acquired land, as noticed above, is of small area ranging from one Biswa to four Biswas. In the above three appeals, the learned District Judge has rightly assessed the market value of

the acquired land at Rs.1 lac per Bigha irrespective of classification of the land. In RFA No.1 of 2000, 4 Biswas, in RFA No.2 of 2000, 2 Biswas and in RFA No.3 of 2000, 1 Biswa total 7 Biswas of land is involved. The market value of acquired land, as assessed by learned District Judge in all the three appeals, comes to Rs.35,000/- On this amount, learned District Judge has allowed other statutory payments, solatium and interest. It has been submitted by learned counsel for the appellants that the learned District Judge has erred in awarding interest from the date of possession which is earlier to the date of notification under Section 4 of the Act. There is force in this submission of learned counsel for the appellants that interest cannot be awarded prior to notification under Section 4 of the Act but keeping in view the fact that very small amounts are involved in all the three appeals, I am not inclined to interfere on the question of interest also.

8. No other point was urged.

9. The result of the above discussion is that there is no merit in these appeals and accordingly the appeals, being RFA No.1 of 2000, RFA No.2 of 2000 and RFA No.3 of 2000, are dismissed. There is no order as to costs.

October 10, 2007 ***(Kuldip Singh)***
(soni) ***Judge.***

1. ***RFA No.1 of 2000***:

LAC & Anr. Versus Sheela Devi & Ors.

For the appellants: **Mr.Shrawan Dogra, Advocate.**

For the respondents: **Mr.G.D.Verma, Sr.Advocate with Mr.Romesh Verma, Advocate for respondents No.1 and 2.**

Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G., for respondent No.3.

2. ***RFA No.2 o f 2000***:

LAC & Anr. Versus Jai Singh & Ors.

3. ***RFA No.3 of 2000***:

LAC & Anr. Versus Munshi Devi *& Ors*.

For the appellants: **Mr.Shrawan Dogra, Advocate.**

For the respondents: **Mr.G.D.Verma, Sr.Advocate with Mr.Romesh Verma, Advocate for respondents No.1 to 3.**

Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G., for respondent No.4.

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